



South Carolina Department of Consumer Affairs

The Savvy Consumer's Guide to TAMING TELEMARKETERS



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South Carolina consumers have several options available to them when seeking relief from telemarketers. They can:

- ☞ Seek monetary relief under the Telephone Consumer Protection Act of 1991 (TCPA);
- ☞ File a complaint with the South Carolina Department of Consumer Affairs that could result in the telemarketer being assessed penalties or fines; or possibly imprisoned;
- ☞ “Opt out” of receiving direct mail marketing or telemarketing calls by registering with the Direct Marketing Association (DMA); or
- ☞ “Opt out” of receiving postal, telemarketing and electronic credit offers.

The Telephone Consumer Protection Act requires telemarketers to:

- ☞ Place calls between the hours of 8:00 a.m. and 9:00 p.m. Any calls made outside of these hours are a violation of the act.
- ☞ Furnish the caller’s name or the name of the person or business placing the call. The representative must also provide the address or telephone number of the company.
- ☞ Maintain a do-not-call list. When consumers request that their names be placed on the do-not-call list, the company must honor the request IMMEDIATELY. The company cannot call again for 10 YEARS.
- ☞ Provide a copy of the company’s do-not-call policy on demand.
- ☞ The act also bans telemarketers from placing calls to guest or patient rooms in hospitals, health care facilities or elderly homes.

Each violation — there can be several in one telephone call — can result in a civil penalty of \$500, payable to the consumer. If a call is made to intentionally harass, the penalty can be tripled.

The intent of the act is to stop unwanted telephone calls into your home. It should not be viewed as an opportunity to make money.

Two classes of callers are exempt from the act: Tax-Exempt Charities and Public Opinion Polls.

If all you want to do is decrease the number of calls that you receive, when a telemarketer calls, simply say, “Please put me on your do-not-call list.”

If you want to pursue a legal claim against a company that calls repeatedly, then you must keep records. The best way is to keep a log by each telephone.

- ☞ Write down the date, time, the name of the company and the name of the person calling
- ☞ Ask if they have a do-not-call list. If the telemarketer seems familiar with the list, simply ask to be placed on the list. Record the date of your request on the log.
- ☞ If the telemarketer doesn't know about the do-not-call list, ask to speak to a supervisor. The act requires telemarketers to be knowledgeable about do-not-call lists. DO NOT take no for an answer. There must be a supervisor on duty, and you have the right to file a complaint if the company is not following the provisions of TCPA.
- ☞ Write down the name of the supervisor. Ask the supervisor if the company maintains a do-not-call list. If the supervisor is familiar with the list, ask that your name be placed on it. If the supervisor is not familiar with the list, that's grounds for a claim.

Take it slow! You probably won't be able to recover anything if the company's only violation is the telemarketer's failure to provide an address or telephone number. And, if a company calls a second time, they can use the excuse that the call was an inadvertent mistake. However, if the company calls a third time, it becomes obvious that the second call was not a mistake, the plaintiff (you) may collect for the second AND third calls.

- ☎ The first thing to do is to write a formal business letter to the president of the company, stating that the letter is a formal claim for \$xxx (state the amount you are claiming) for violation(s) of the Telephone Consumer Protection Act of 1991.
- ☎ Include information about all of the calls from your telephone logs. Include the dates, times and name(s) of supervisors you spoke to, the date you requested your name to be put on the do-not-call list and anything else you consider pertinent.
- ☎ Tell them how you arrived at the amount you are claiming — \$500 per violation.
- ☎ Don't forget to ask for a written copy of the company's do-not-call policy in your letter.
- ☎ If you're willing to settle for a smaller amount, let the company know you're willing to negotiate. Consider settling for a smaller amount. You get less money than you are entitled to, but you avoid having to sue to recover anything. Companies know when they're wrong they usually lose in court. They want to avoid legal costs, and more importantly, negative publicity.
- ☎ Send the letter Certified Mail, Return Receipt Requested.
- ☎ Give them a reasonable time to respond — three weeks. If they haven't responded by the deadline, you may decide to sue.
- ☎ In South Carolina, small claims (the demand or value of property involved does not exceed \$7,500) are handled in Magistrate's Court. By design, Magistrate's Court is conducted in an informal manner. Rules of evidence apply but are relaxed in the interest of justice. Contact your local magistrate's office for assistance in filing your claim.

☞ Violations should also be reported to the:

Federal Trade Commission
1.877.382.4357
FTC
CRC-240
Washington, DC 20580

Federal Communications Commission
1.888.225.5322
FCC
445 12th Street, S.W
Washington, DC 20554

State Attorney General
803.734.3970

SC Department of Consumer Affairs
803.734.4200 or 800.922.1594
The Department of Consumer Affairs regulates unsolicited telephone calls in South Carolina.

§ 16-17-445 of the South Carolina State Code requires telemarketers placing unsolicited calls to:

- ☞ Make known the purpose of the call is to sell goods and services.
- ☞ Promptly identify the seller.
- ☞ Make known that no purchase or payment is necessary for the consumer to be able to win a prize or participate in a prize promotion.
- ☞ Disclose the cost of the merchandise and any extra or special charges such as shipping, handling and taxes to the consumer.
- ☞ The telemarketer must also remove the consumer's name and telephone number from the company's calling list if requested by the consumer.
- ☞ The request can be verbal or in writing.
- ☞ If the consumer wants to make the request in writing, the telemarketer must

immediately give the consumer the address to send the written request.

- ☞ The S.C. Department of Consumer Affairs investigates any complaints received concerning violations of this law.
- ☞ If the agency finds that there has been a violation of the law, it may impose a civil penalty not to exceed \$100 for a first violation, \$200 for a second violation and \$1,000 for a third or any subsequent violations.
- ☞ The department can also seek other relief, including an order from the court prohibiting the telemarketer from placing subsequent calls to the consumer.
- ☞ Persons who violate the provisions of this law are guilty of a misdemeanor and can be fined up to \$200, or imprisoned up to 30 days upon conviction for a first or second offense, and fined not less than \$200 or more than \$500, or imprisoned not more than 30 days for a third or subsequent offenses.
- ☞ Each violation of the law constitutes a separate offense.

The Direct Marketing Association (DMA) offers Mail and Telephone Preference Services that allow you to “opt out” of receiving direct mail marketing and telemarketing calls from many national companies for FIVE years.

- ☞ When you register with these services, your name is placed in a “delete” file that is updated four times a year and made available to direct mail and telemarketers.
- ☞ You should notice a decrease in the number of solicitations that you receive two to three months after your name is entered into the quarterly file.
- ☞ Your registration will NOT stop mailings or calls from organizations not registered with the DMA Mail and Telephone Preference Services.
- ☞ For Direct Mail Marketing written requests for name removal:
MAIL PREFERENCE SERVICE
P.O. Box 9008
Farmingdale, NY 11735-9008
- ☞ For Telemarketing written requests for name and telephone number removal:
TELEPHONE PREFERENCE SERVICE
P.O. Box 9014
Farmingdale, NY 11735-9014

☎ For Sweepstakes
Complaints specifically related to sweepstakes advertising including complaints from seniors or their caregivers:
SWEEPSTAKES HELPLINE
111 19th Street, N.W.
Washington, DC 20036
202.861.2475

The four major U.S. credit bureaus, (Equifax, Experian, Trans Union and Novus/Innovis), have a toll-free “opt out” number, 1.888.567.8688 — 1.888.5 OPT OUT, that will opt you out of receiving postal, telemarketing and electronic credit offers — “credit spam,” permanently, or for two years.

When you dial this number, you will be prompted to press “1” if you are dialing in response to an e-mail that you received, or to press “2”, if you are not calling about the e-mail.

Press “2”, DO NOT press “1”.

Then listen carefully.

Option “1” opts you out of receiving postal, telemarketing and electronic “credit spam” for TWO YEARS.

Option “2” allows you to “opt-in” to receive unsolicited postal, telemarketing and electronic credit offers.

Option “3” opts you out of receiving postal, telemarketing and electronic “credit spam” PERMANENTLY.

Whichever option you choose, the computer will prompt you for your:

Telephone number
Confirmation of your address
First and last name and middle initial (spoken and spelled); and
Social Security Number (Taxpayer ID number if you are not a citizen), in that order.

At the end of the automated process you will be given the option to opt-in, or opt out, additional family members.

You will receive written confirmation of your request(s) in a few weeks.